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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT TACOMA

10 CHRISTOPHER LEON SMITH,

11 Plaintiff,

12 v.

13 PIERCE COUNTY JAIL, *et al.*,

14 Defendants.
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No. 09-5269 FDB

ORDER DENYING MOTION FOR
RECONSIDERATION OF ORDER
DECLINING TO ADOPT REPORT AND
RECOMMENDATION AND GRANTING
MOTION TO DISMISS FOR FAILURE
TO EXHAUST ADMINISTRATIVE
REMEDIES

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18 This matter comes before the Court on Plaintiff's motion for reconsideration of this
19 Court's Order declining to adopt the Report and Recommendation of the Magistrate Judge and
20 granting Defendants' motion to dismiss for failure to exhaust administrative remedies.

21 Court found that the evidence reflects that Plaintiff Smith filed this lawsuit prematurely
22 and had not yet fully exhausted his administrative remedies. The Court further found the
23 Defendants had met their burden of proving plaintiff had failed to exhaust all available
24 administrative remedies as required by 42 U.S.C. § 1997e(a). Claims that are not exhausted
25 must be dismissed and this Court lacks discretion to resolve those claims on the merits. See e.g.,
26 McKinney v. Carey, 311 F.3d 1198 (9th Cir. 2002).

ORDER - 1

1 Pursuant to Local Rules W.D. Wash. CR 7(h)(1), motions for reconsideration are
2 disfavored, and will ordinarily be denied unless there is a showing of (a) manifest error in the
3 prior ruling, or (b) facts or legal authority which could not have been brought to the attention of
4 the court earlier, through reasonable diligence. Plaintiff has not made the requisite showing as to
5 either of the grounds for reconsideration under CR 7(h)(1).

6 (1) Plaintiff's motion for reconsideration [Dkt. # 51] is DENIED.
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8 (2) The Clerk is directed to send copies of this Order to Plaintiff, and to the Hon. J.
9 Richard Creatura.

10 DATED this 4th day of December, 2009.
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15 FRANKLIN D. BURGESS
16 UNITED STATES DISTRICT JUDGE
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